

(1988) 01 BOM CK 0062

In the Bombay High Court

Case No : Misc. Petition No. 599 of 1984

Ganesh and others

APPELLANT

Vs

The Maharashtra State Electricity Board

RESPONDENT

Date of Decision : 13-01-1988

Acts Referred:

Electricity Rules, 1956 — Rule 2(2A), 3(2A)
Equal Remuneration Act, 1976 — Section 4

Citation : (1990) 2 LLJ 61

Hon'ble Judges : V.A. Mohta, J;M.S. Ratnaparkhi, J

Bench : Division Bench

Judgement

Ratnaparkhi, J.—A mandate had been claimed against the respondent, the Maharashtra State Electricity Board directing them to grant equal fringe benefits such as the generation allowance and others, equal with the degree and diploma holders, with a view to do away with the unequal treatment meted out to the non-graduates and non-diploma holders.

2. The petitioner No. 1 is presently working as a Supervisor/Assistant Shift Engineer at Khaparkheda Thermal Power Station. The petitioner No. 2 is working as a Head Supervisor/Assistant Superintendent at Nasik Thermal Power Station. The petitioner No. 3 is working as a Supervisor/Assistant Shift Engineer at Koradi Thermal Power Station. The petitioner No. 4 is working as Chargeman Grade-II at Koradi Thermal Power Station. The petitioner No. 5 is working as a Head Supervisor/Assistant Superintendent at Koradi Thermal Power Station. The petitioners are neither graduates in Mechanical, Civil or Electrical Engineering, nor do they hold any Diploma in either of these three faculties. They are all Matriculates and some of them have obtained certificates in Electrical Engineering from the recognised Institutes. They are all in service of the Maharashtra State Electricity Board. The Board has three wings (1) Generation (2) Transmission and Distribution and (3) Construction. All the petitioners are working in the Generation Wing. The dispute in the present litigation concerns two categories viz. Chargeman Grade-II and Chargeman Grade-I. These two

cadres are manned by the direct recruits having a Degree or Diploma in the respective branches and also by the non-degree and diploma holders coming from the cadres. Chargeman Grade-II commands the time-scale of Rs. 600-35-1125 and Chargeman Grade-I commands the time scale of Rs. 775-45-1450. The degree-holders and diploma holders are eligible for some advanced increments when they entered the cadre, but except for that the time-scale for all the incumbents of this cadre is the same. We are not very much concerned with the scales in this litigation. This litigation covers a very narrow compass and it is regarding the inequality in the fringe benefits that are made available to the personnel of this cadre.

3. To appreciate the real controversy, some facts will be necessary to be stated. On or about 26th December, 1966, the Maharashtra State Electricity Board passed a resolution under which "generation allowance" was paid only to the graduates and diploma holders working in the generations section of the four Power Houses located at Khaparkheda, Paras, Ballarshah and Pophali. The rate of allowance admissible to Chargeman Grade-II was Rs. 30/- per month, whereas to Chargeman Grade-I it was Rs. 40/- per month. Assistant Engineers, Deputy Engineers, Senior and Junior Control Engineers were entitled to Rs. 50/- per month, whereas Engineers corresponding to Senior Thermal Engineers and above were given Rs. 75/- per month. Suffice it to point out at this stage that this allowance was admissible only to those Engineers who were either graduates or diploma holders. Mere certificate holders like the petitioners were not admitted to this benefit. By subsequent circular issued on 6th June, 1970 the Board clarified that "generation allowance" was admissible to those diploma holders and degree holders who were directly working in the generation of power involving shift duties in the Power Station. Though in fact the non-degree holders and non-diploma holders like the petitioners were working as Chargeman Grade-I and Chargeman Grade-II, this allowance was not made available to them. The five petitioners (out of whom the petitioners No. 1 and 2 are the petitioners in the present petition) approached this High Court vide Spl. Civil Appln. No. 142 of 1974 under its extraordinary jurisdiction for a mandatory writ. The petition was allowed on full hearing and this High Court, by its judgment dated 13th August, 1981 directed the Maharashtra State Electricity Board to make admissible the generation allowance to those employees who are not having either diploma or degree in Electrical or Mechanical Engineering, but are working on the specified posts at the four Power Stations.

4. While the abovesaid writ petition was pending, the Maharashtra State Electricity Board issued a general order No. 96. dated 3rd April, 1980 granting fringe benefits including the "generation allowance". These benefits were, however, restricted to the degree and diploma holders. These benefits were not made available to the non-degree and non-diploma holders. However, the Maharashtra State Electricity Board issued a further general order No. 97 dated 23rd September, 1980 making these fringe benefits available to other officers including the Technical Officers not possessing the degree or diploma in

Engineering or equivalent qualifications. However, the rates at which these fringe benefits were made available were less as compared with the rates at which the degree and diploma holders were entitled under the office order No. 96. The petitioners are challenging this as discriminatory because according to them they being equally placed with the degree-holders and diploma-holders (as far as the Chargeman Grade-I and Chargeman Grade-II cadre is concerned) there cannot be any discrimination in the quantum of the allowance. It is also their contention that originally these fringe benefits were made available only to the four generation centres, but now the generation centres have increased. The benefit should be extended to all similarly placed persons in all the Power Stations under the control of the Maharashtra State Electricity board.

5. The respondent has filed its return. One of the contentions was that this Court should not exercise its extraordinary jurisdiction for delay and laches. It was further contended that the petition is not in a representative capacity and, therefore, it should not be entertained. They admit that all the petitioners belong to the generation cadres and are included in the category of skilled/semi-skilled technicians. It is contended that a separate seniority list of skilled and semi-skilled persons has been maintained whereas a separate seniority list of graduates and diploma holders is also maintained. According to them, the graduates and diploma holders cannot be equated with the petitioners. The graduates and the diploma holders are more qualified and their services are required for handling sophisticated equipments in the generation sector and they have a better theoretical knowledge than the ordinary technicians. It was their contention that with the expansion of power generation sophisticated machinery was required to be installed at the different Power Stations and there was already a dearth of graduates and diploma-holders in Engineering, with a view to attract graduates and diploma-holders towards this responsible task, higher fringe benefits were given to them. It was their contention that this sort of distinction was not irrational. They admit that exclusion of the non-graduates/diploma holders from the benefits of generation allowance was challenged before this Court and that challenge was accepted by this Court. As far as further notification giving different allowances to graduates and diploma-holders and non-graduates and non-diploma holders is concerned, their contention is that such differentiation on the qualification basis is neither irrational nor unconstitutional.

6. The dispute before us has been considerably narrowed down because the challenge before us is to the "generation allowance" and other fringe benefits and not to the pay-scale structure. Mr. Aney, the learned advocate for the petitioners, strenuously urged before us that his clients may not be entitled to the same scales to which the graduate or diploma holders are entitled. He also fairly conceded before us that his clients, not being equipped with the degrees and diplomas, may not expect those promotional avenues which are available to the graduates and diploma holders. According to him, what his clients are claiming in this petition is only the fringe benefits including the "generation

allowance" with which the degrees and diplomas have absolutely no concern. Similarly the promotional prospects, the academic concept of responsibility etc. are completely irrelevant in the present dispute. What he urged before us was that the degree-holders, diploma holders and the petitioners were working as Chargeman Grade-I and Chargeman Grade-II and they were doing the same work and discharging the same responsibilities. It was his contention that when they are doing same work and discharging the same responsibilities, there could never be any scope for paying the degree-holder and diploma-holder differently and a non-degree and non-diploma holder differently. There appears to be much force in what Mr. Aney contends.

7. Our attention has been drawn to the resolution passed by the Electricity Board in 1966. The purpose behind the grant of special allowance called the "generation allowance" has also been stated in details. This allowance has been made available to the technical workers working in the Power House. The benefit has been extended only to the degree holders and the diploma holders. But it is an admitted position that some persons who are neither the degree-holders nor the diploma holders were in fact working in the generation section at the Power House. Prima facie it appears that the workers working in this section needed some incentive - may be due to the arduous nature of duties that were required to be performed in this particular section. Prima facie it appears that this allowance is work-based and not education/qualification based.

8. Mr. Manohar, the learned Advocate for the respondent, strenuously urged before us that the allowance is qualification/education based and according to him, main considerations before the Board in allowing this allowance were : (1) the potentials of the persons to further promotions, (2) obvious differentiation between the cadres and (3) the nature of duties. According to him, the graduates and the diploma-holders have a potential to aspire for further promotions even to the highest rung of the ladder and these potentials were completely absent in the persons possessing neither the degree nor the diplomas. Secondly, according to him, the cadres are quite different. Though it was conceded that the cadre of Chargeman Grade I and Grade II do contain some persons who were neither the degree-holders nor the diploma-holders, what Mr. Manohar urged before us was that the purpose behind granting of this allowance was to encourage as many degree-holders and as many diploma-holders into service of the Electricity Board so that it will have as its hand tremendous potential to man the whole generation section upto the highest level. It is this consideration, according to Mr. Manohar, that made the Electricity Board to give a sort of incentive to these persons. The argument suffers from one infirmity. The admitted position being that even the non-qualified (non-degree and non-diploma holders) are eligible to man the cadre of Chargeman Grade I and Grade II, there is no question to consider the potentialities of the person as far as the fringe benefits are concerned. Mr. Aney fairly conceded before us that the petitioners being the non-qualified engineers may not, and do not, aspire to go to the highest rung of the ladder. But according to him, it should not deprive them of the benefits which a person

actually working on the generation side is entitled to get. The considerations of qualifications may be necessary for further promotions and if such a distinction is made between the persons and persons, nobody can have any serious grievance regarding that. But when different persons having qualifications and having no qualifications put in their zeal in a particular endeavour, there is no scope for differentiating them as far as the benefits attached to this work is concerned. From this point of view, it can be safely said that there is no scope for differentiation on the basis of qualification as far as this limited point is concerned.

9. Mr. Manohar invited our attention to rule 3(2A) of the Indian Electricity Rules, 1956 which creates a bar on the unqualified persons from operating or undertaking maintenance of any part or whole of generating section of the capacity of 100 MW and above. This rule has been recently added by amendment incorporate on 24th April, 1981 and it has come into force with effect from 9th May, 1981. We are particularly making reference to this amendment because this amendment was not in existence when the previous writ petition was heard and allowed. We shall consider the effects of this amendment on the ratio held in that writ petition a bit subsequently. What Mr. Manohar urged at this stage before us was that the statute itself makes a difference between the qualified engineers and unqualified engineers and this difference cannot be called as irrational or unconstitutional. On the other hand, according to him, the present action of the Electricity Board in allowing different quantum of allowance to the graduates on one hand and non-graduates and non-diploma holders on the other, is reasonable.

10. In order to appreciate the arguments of Mr. Manohar, it will be necessary to go deep into the so-called bar. Sub-rule (2A)(a) of rule 3 of the Indian Electricity Rules, 1956 reads as follows :

"No person shall be authorised to operate or undertake maintenance of any part or whole of the generating station of capacity of 100 MW and above together with the associated sub-station, unless he is adequately qualified and has successfully undergone the type of training specified in Annexure-XIV.

Provided that the provisions contained in this sub-rules shall have effect in respect of persons already authorised to operate or undertake maintenance of any part or whole of a generating station as aforesaid from the date to be specified by the appropriate Government, but such a date shall not be later than a period of 5 years from the date this rule comes into force.

(b) Appropriate Government may, on the recommendations of the owner of such generating station, relax the conditions stipulated in clause (a) of this sub-rule for any engineer and such other persons who have already sufficient experience in the operation and maintenance of the generating station." The rule thus no doubt creates a bar against non-qualified persons from operating or undertaking a maintenance of any part or whole of a generating station of the capacity of 100

MW and above unless such person is adequately qualified and has successfully undergone the type of training specified in Annexure-XIV. At the same time the power has been vested in the State Government to relax this rule and allow other persons to operate or undertake maintenance of such station. For enabling the relaxation two conditions are necessary : (1) the recommendation of relaxation must be made by the owner of the Power Station (in the present case the Maharashtra State Electricity Board) and (2) the person coming within such relaxation must have already sufficient experience in the operation and maintenance of a generating station. The State of Maharashtra has already allowed such relaxation and we have on record a notification issued by the Government of Maharashtra - Industries, Energy and labour Department - Resolution No. IBK-1184/CR-A-19-NRG-4, Mantralaya Bombay, dated 11th March, 1986. By this resolution the Government of Maharashtra have relaxed the provisions of clause (a) of sub-rule (2A) of R. 3 of the said Rules in respect of persons mentioned in the list attached to this resolution. A list of persons has been attached thereto. As far as the Koradi Power Station is concerned, the present petitioner No. 3 finds his place at Serial No. 135 of the list. A list of Parali Power Station is attached, but unfortunately the list of persons eligible to work at other Power Stations has not been attached. The material so brought on record does show that the relaxation of the rigours of R. 3(2A)(a) of the Rules has been made in respect of one person and that person can man the Power Station, though he is unqualified (not being a graduate or a diploma-holder). Mr. Manohar urged before us that this list has been prepared only as a stop-gap arrangement so that when no qualified person is available, the Station should not be allowed to run without any recognised qualified person. This argument has hardly any merits as far as the crux of the matter is concerned. The crux of the matter is that the Government has taken a decision even to recognise some of the non-qualified persons (inspite of the bar created by sub-rule (2A)(a) of R. 3) to head the Power Station. From this point of view it can be reasonably said that the non-qualified persons are not completely excluded from shouldering the responsibilities which at one stage were exclusively being shouldered by qualified engineers.

11. It is thus clear that though there is good reason in differentiating between graduates and diploma holders on one hand and non-graduates and non-diploma holders on the other, as far as the appointments are concerned, this rationale cannot be reasonably extended to the fringe benefits which are allowed to persons working on a particular job. There is no dispute that if the degree-holders and diploma-holders along with non-degree-holders and non-diploma holders are actually working as Chargeman Grade-I and Grade-II, they are putting up same work. May be that the first category has theoretical experience, but the second category has tremendous field experience with them. Thus whatever they lack in qualifications is off-set by the tremendous field experience at their command. Thus as far as the working in that particular section is concerned, all the persons are the same and similar. There is no scope for

differentiating between persons and persons as far as that working is concerned.

12. This Court in *Murlidhar Vishnu Khare, v. M. S. E. B. Fort, Bombay*, Spl. Civil Appln. No. 142 of 1974, decided on 13th August 1981, discussed this very point in details. Similar arguments were advanced even then and observed in paragraph 18 of the judgment :

"The generation allowance then clearly answers the test of its being a purely work-based allowance and this is further demonstrated by the rule that a qualified Engineer working directly on a post concerned with generation of electricity at one of the specified power stations, and therefore, getting the generation allowance while he works there, ceases to be eligible for the same as soon as he is transferred from the generation side, say to the Distribution side. Then we see no reason why the generation allowance should not also be payable to Engineers also working on posts involving shift duties in the generation of power at the specified major Power Station, though those Engineers may not be holding degree or diploma in Electrical or Mechanical Engineering."

13. We are in full agreement with what this Court has held in the abovesaid writ petition that the generation allowance and other fringe benefits are work-based. Mr. Manohar urged before us that his argument that it is education/qualification based is augmented by amendment to R. 2(2A) of the Indian Electricity Rules, 1956 (quoted supra). He urged that even the statute creates a disability against persons who do not possess the requisite qualifications from operating or maintaining a Power House generating electricity of 100 KW's and above. According to him, when the unqualified persons are debarred from operating a Power House, there is no justification in allowing them to the fringe benefits. As already pointed out this argument contains an inherent infirmity. This Court has held in unequivocal terms that the generation allowance is work-based and not qualification-based. This allowance is meant for the persons who are working on the generation side at the Power Station. When the persons are actually putting up work on the generation side, they must be entitled to this benefit. Their qualifications, academic career etc. etc. would not be a feather in their cap. As far as granting this allowance is concerned, they must be treated alike and there is no scope for differentiation between the workers as educationally qualified and not educationally qualified. The main requirement for this benefit is the actual work. In so far as they fulfil this requirement, they automatically become eligible for the allowance.

14. Mr. Aney, the learned Advocate for the petitioners invited our attention to *Bhagwan Dass and Others Vs. State of Haryana and Others*, . In that case it appears that 102 persons (who were the petitioners) were employed as Supervisors of the Education Department on temporary basis and on completion of six months they used to get breaks and again appointed. The respondents on the other hand were recommended by the Public Service Commission and they were getting higher salaries. The main question involved in that case was whether the petitioners were entitled to equal remunerations as compared with

the respondents. The contention of the State of Haryana was that the petitioners were temporary employees recruited for a particular scheme, which was a temporary one. On that ground they justified the difference of pay. The Supreme Court observed.

"Lastly we have to deal with the contention that the scheme is a temporary scheme and the posts are sanctioned on an year-to-year basis having regard to the temporary nature of the scheme. We are unable to comprehend how this factor can be invoked for violating "equal pay for equal work" doctrine. Whether appointments are for temporary periods and the schemes are temporary in nature is irrelevant once it is shown that the nature of the duties and functions discharged and the work done is similar and the doctrine of "equal pay for equal work" is attached."

15. Our attention was also invited to M/s. Mackinnon Mackenzie and Co. Ltd. Vs. Audrey D'costa and another, . Though this was a case under the Equal Remuneration Act (No. 25 of 1976), the observations made by the Supreme Court in paragraph 7 are general and they can lend a considerable assistance in the present case. The Supreme Court observed (p 541) :

"Whether a particular work is same or similar in nature as another work can be determined on three considerations. In deciding whether the work is the same or broadly similar, the Authority should take a broad view; next, in ascertaining whether any differences are of practical importance, the Authority should take an equally broad approach, for the very concept of similar work implies differences in details, but these should not defeat a claim for equality on trivial grounds. It should look at the duties actually performed, not those theoretically possible."

Though the observations were in the context of S. 4 of the Equal Remuneration Act, the general observations made by the Supreme Court above assist us in scanning the work put in by the petitioners in the present case. Looked at from this background, the argument of Mr. Manohar that the degree-holders and diploma-holders had tremendous potentialities and they have a chance of promotions in future becomes irrelevant, because when the allowance is granted for a particular work, what is relevant is the work actually performed and not one theoretically possible. These considerations may be relevant for other purpose, but not for the irrational classification which we find in the present case.

16. This Court has already held that "generation allowance" is work-based and not qualification-based. These observations came to be made when only graduates and diploma-holders were entitled to "generation allowance". It is in that context that this Court held that the allowance being work-based, there was no justification in distinguishing the workers on educational qualifications. It is only from this point of view that this Court held that even the unqualified workers (non-degree-holders and non-diploma-holders) were eligible for this allowance. The position prevailing at the present is somewhat different. The Maharashtra State Electricity Board had now made this benefit available even to

the non-graduates and non-diploma holders. However, there is a difference of rates available to the degree-holders and diploma holders and to the non-degree and non-diploma-holders.

17. Mr. Manohar, the learned counsel for respondent, urged before us that the ratio laid down in W.P. 142/74 had a peculiar context, and hence it cannot be accepted now because of the changed circumstances. According to him, the M.S.E.B. differentiated between the Degree/Diploma-holders on one hand and non-degree/non-diploma-holders on the other. The principle underlying the differentiation was the concept of responsibilities. According to him, in 1982, the statute has also recognised this differentiation as reasonable, when a bar was created on the non-qualified personnel in operating/maintaining the power house. True, the Rule maintains that the power station having a capacity of generation of 100 KW or above shall be headed by the qualified engineer and other personnel shall work under his directions. Thus, according to him, the differentiation between the qualified and unqualified engineers is reasonable. We find ourselves unable to accept this argument. First of all, as pointed out earlier, this has nothing to do with the quality or quantity of work which Chargemen Grade I and II put in. In view of our findings that fringe benefits are work-based and not qualifications based, such differentiation is unreasonable.

18. Even otherwise, Mr. Manohar's argument cannot be accepted. In spite of the fact that the Government of Maharashtra has relaxed the rigours of R. 3(2A) and recognised atleast the petitioner 3, as a person competent to operate/maintain the power house, we may assume for the time being that the qualified Engineer alone can operate/maintain the power house. Other personnel has to work under his directions. Other personnel includes the Degree/Diploma holders and also the non-degree/Diploma-holders (who constitute the cadre of Chargemen Grade I and II). Mr. Manohar's arguments could command some force if the fringe benefits were made available only to the persons in charge of the power station. But these benefits are made available to all working in that unit. Thus to pay higher allowances to the Degree/Diploma holders, and lower to others is definitely discriminatory.

19. The point which arises for decision before us is whether a differentiation like this is possible under the Constitution. It being an admitted position that the Chargemen - Grade I and Grade II include the degree-holders, diploma-holders and also the non-degree and non-diploma-holders like the petitioners, allowance must be made available equally to the persons who are Chargemen Grade I and Chargemen Grade II. There cannot be any scope for different quantum being available to one category than other. As long as they are working as Chargemen, they must get the same allowance as the degree-holders and diploma-holders get.

20. Though in the petition grievance was made about the maintainability of the petition, no argument was advanced before us on that behalf. There was no challenge to the locus standi of the petitioners.

21. We have been taken through the General Order No. 97, dated 23rd September, 1980 and also the General Order No. 95, dated 3rd April 1980 (which was exclusively meant for the degree-holders and diploma-holders). Qualified Sub-Engineers/Chargeman Grade II are entitled to generation allowance of Rs. 120/-. Qualified Junior Engineers/Chargeman Grade I are entitled to Rs. 140/-. On the other hand, the non degree-holders and non-diploma-holders under the General Order No. 97 get only Rs. 110/-. We find ourselves unable to justify this discrimination. When the qualified Sub-Engineer/Chargeman Grade II get Rs. 120/- as generation allowance, the non-qualified Chargeman Grade II must also get the same quantum. Similarly if qualified Engineers/Chargeman Grade I get Rs. 140/- per month, the non-qualified Chargeman Grade I must also get the same generation allowance.

22. In the petition the petitioners have claimed not only the advantage of equal generation allowances, but also of other fringe benefits. These fringe benefits are detailed in General Orders No. 96 and 97. The other fringe benefits include : (1) New System Control Allowance, (2) Project Allowance, (3) Field Allowance and (4) Electricity Supervisory Allowance. It is also clear from these Circulars that one person at one time is entitled to only one allowance and not the other. These allowances are also attached to particular posts which a person holds. We, therefore, hold that even in respect of the other fringe benefits other than the generation allowances, a discrimination between the graduates and diploma-holders on one hand and non-graduates and non-diploma-holders on the other cannot be allowed. The non-degree and non-diploma-holders must get the same fringe benefits as the degree holders and diploma-holders get if they are otherwise eligible for these benefits.

23. The last prayer made before us was that in the Resolution of 1966 the generation allowance was made available only at four power stations, namely, Khaparkheda, Paras, Ballarsha and Pophali. Thereafter, there has been tremendous increase in the Power Stations. It was prayed that these benefits be made available to all the Power Stations. Rationally, there cannot be any differentiation between one Power Station and another inasmuch as generation of the electricity has been undertaken at all the Power Stations. Similar work is being put in. We, therefore, direct that generation allowance shall be paid at other Power Stations also.

24. The petition is, therefore, allowed. Rule is made absolute in terms of clause (a) of the prayer. The respondent shall bear the costs of the petition in addition to their own. The respondent is directed to work out the difference of the allowance and make the payment to the petitioners within six months from today.